

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

COMMANDER EMILY SHILLING, *et al.*,

*Plaintiffs,*

*v.*

UNITED STATES OF AMERICA, *et al.*,

*Defendants.*

No. 2:25-cv-00241 BHS

**PLAINTIFFS' MOTION FOR  
LEAVE TO FILE A SURREPLY IN  
OPPOSITION TO DEFENDANTS'  
MOTION TO STAY PENDING  
APPEAL**

**Note on Motion Calendar:  
September 18, 2025**

Pursuant to Federal Rule of Civil Procedure 7 and Local Civil Rule 7, Plaintiffs, by and through their counsel, respectfully move for leave to file the attached proposed surreply to address an argument raised by Defendants for the first time in their reply brief (Dkt. No. 127) in support of their motion to stay proceedings pending appeal (Dkt. No. 123). The Court has set a hearing on the motion to stay for Thursday, September 4, 2025.

In their reply brief, Defendants claim “[t]he case has not progressed” and that “it was only after Defendants moved to formalize the status quo that Plaintiffs claimed ‘irreparable harm’ that would ensue from a ‘halt’ of the district court proceedings.” Dkt. No. 127 at 3. As such, they argue that the “Court should not credit Plaintiffs’ claims of ‘urgency’ and the ‘continue[d] inflict[ion] of serious harm.’” *Id.* The attached surreply is limited to rebutting Defendants’ argument that

1 Plaintiffs have not sought to move the case forward and therefore will not be harmed by a stay of  
 2 proceedings. Defendants' argument is highly disingenuous, at best.

3 Plaintiffs are mindful that the local rules state that "a surreply filed for any other reason  
 4 [than to strike material contained in or attached to a reply brief] will not be considered." LCR  
 5 7(g)(2). "However, 7(g) does not speak to motion to leave to file a surreply; it discusses when the  
 6 surreply itself may be filed with respect to requests to strike material contained in or attached to a  
 7 reply brief." *Fleming v. Parnell*, No. C13-5062 BHS, 2013 WL 4511494, at \*2 (W.D. Wash. Aug.  
 8 23, 2013) (Settle, J.). "A surreply is generally available only where the moving party raises new  
 9 arguments for the first time in the reply." *Smith v. BNSF Ry. Co.*, No. 2:18-CV-00179-SMJ, 2020  
 10 WL 2297789, at \*1 (E.D. Wash. Jan. 15, 2020); *see also United States v. Loo*, No. 2:24-CR-00072-  
 11 LK, 2025 WL 1582283, at \*1 (W.D. Wash. June 4, 2025) ("Because Loo's reply included a new  
 12 argument that was not in his motion—and he did not obtain leave to file the new argument—the  
 13 Court allowed the Government to file a surreply."); *Georgia-Pac. Gypsum, LLC v. Int'l Bhd. of*  
 14 *Teamsters, Loc. 117*, No. C16-5255BHS, 2016 WL 4703323, at \*2 (W.D. Wash. Sept. 8, 2016)  
 15 (Settle, J.) (granting motion to file surreply after noting that "additional arguments in a reply brief  
 16 should be ignored unless the opposing party has an opportunity to respond").

17 Here, as noted, Defendants presented new (misleading) arguments in their reply brief as to  
 18 why Plaintiffs would not be harmed by a stay of the proceedings pending appeal of the preliminary  
 19 injunction. The proposed surreply is limited to addressing this argument alone in order to provide  
 20 the Court with an accurate picture of the parties' interactions to date on ways to move this case  
 21 forward. The Court should therefore grant the instant motion for leave to file a surreply.

22 Plaintiffs' counsel has conferred with counsel for Defendants, who has communicated that  
 23 "Defendants take no position on your request for leave to file a surreply."

24 For the foregoing reasons, Plaintiffs respectfully request that the Court grant leave for  
 25 Plaintiffs to file the attached proposed surreply.

26 Dated this 28th day of August 2025.

*I certify that this motion for leave to file a surreply contains 531 words, in compliance with the Local Civil Rules.*

Respectfully submitted,

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